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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/090,867	06/04/1998	JAMES W. BAUMGARTNER	95-33D1	4344

23483 7590 12/31/2002

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EXAMINER

LAZAR WESLEY, ELIANE M

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 12/31/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/090,867

Applicant(s)
Baumgartner

Examiner
Eliane Lazar-Wesley

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1646



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 19, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-13, and 15-32 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-13, and 15-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on November 19, 2002, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/090,867 is acceptable and a CPA has been established. An action on the CPA follows.

Claims 1, 3-13, and 15-32 are under consideration.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1, 3-13, and 15-32 remain rejected under 35 U.S.C. 102(e) for the reasons of record as being anticipated by Collins et al., US Patent 5,710,023, January 20, 1998 or Collins et al., US Patent 6,214,559 B1, April 10, 2001, claiming priority to March 01, 1996.

Claims 1, 3-13, and 15-32 are directed to an isolated polynucleotide of SEQ ID No:1 encoding a ligand-binding receptor polypeptide of SEQ ID No:2, expression vectors , cultured

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eukaryotic cells transformed with the expression vector, and a chimeric polypeptide consisting of the polypeptide of SEQ ID No:2 and a second moiety.

Collins, US Patent 5,710,023, teaches an IL-13bc protein of SEQ ID No:4, which is a receptor that binds the ligand IL13 (col.4, lines 53-63). The IL-13bc protein of SEQ ID No:4 comprises a putative signal sequence, an extracellular domain, a transmembrane domain, and an intracellular domain (col.4, lines 12-22). The amino acid sequence of the instant SEQ ID No:2 is 100% identical over its entire length to SEQ ID No:4 of the Collins patents (see sequence comparison, attached). The polynucleotide of SEQ ID No:3 in Collins is identical to the instant polynucleotide of SEQ ID No:1 at position 11-1289. He teaches that the isolated polynucleotides of the invention may be operably linked to an expression control sequence in an expression vector (col.5, lines 32+), and that a number of types of mammalian cells act as suitable host cells for expression of the IL-13bc protein (col.5, lines 47-57). Collins teaches that IL-13bc or active fragments thereof may be fused to carrier molecules such as the Fc portion of an immunoglobulin or to other proteins, like glutathione S transferase (col.4, line 66 through col.5, line 4).

The limitations of the claims are met.

Applicants' amendment, declaration under 35 USC 1.131 and Exhibits filed August 06, 2001 and the request for reconsideration filed November 19, 2002, have been carefully considered.

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However, a declaration under 35 USC 1.131 does not constitute the proper format for a response in the present situation of potential interference. Instead, Applicants should present their argument according to 37CFR 1.608 (see MPEP 2308 , 2308.01).

4. No claim is allowed.

5. This is a CPA of applicant's earlier Application No. 09/090,867. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eliane Lazar-Wesley, PhD, whose telephone number is (703) 305 4059. The examiner can normally be reached on Monday-Friday from 9:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564.

Official papers filed by fax should be directed to (703) 308 4242. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

ELW

December 27, 2002

EW

A handwritten signature in cursive script, reading "Lorraine Spector". The signature is written in black ink and is positioned above the printed name and title.

**LORRAINE SPECTOR
PRIMARY EXAMINER**